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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/553,337	04/20/2000	Richard R. Reisman	2222.4310003	5134

26111 7590 11/12/2010

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ART UNIT	PAPER NUMBER
2182	
MAIL DATE	DELIVERY MODE
11/12/2010	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/553,337
Filing Date: April 20, 2000
Appellant(s): REISMAN, RICHARD R.

Edward J. Kessler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/18/2010 appealing from the Office action mailed 01/25/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5734871	KLEINERMAN ET AL.	03-1998
5630125	ZELLWEGER	05-1997
6031977	PETTUS	02-2000

RIPscrip Graphics Protocol Specification "Remote Imaging Protocol" Copyright (c) 1992-1993 TeleGrafix Communications, Inc. Revision 1.54 July 19th, 1993 (the language code of Qmodem - note Qmodem-Advanced Communication Operation Manual, Version 4.0, 1989 was first sited as prior art on 08/14/2003)

Microsoft Press' Computer Dictionary, 2nd Edition, 1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 114, 116-122, 124-126, 128-131, 133-141, 143-145, 147-150, 152-155,157-161, 163-172, 175-179, 181-202, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinerman (US 5,734,871), "RIPscrip Graphics Protocol Specification", July 19, 1993, (the language code of *Qmodem* – note Qmodem-Advanced Communication Operation Manual, Version 4.0, 1989 was first sited as prior art on 08/14/2003), Microsoft Press' Computer Dictionary, 2nd Edition, 1993, (previously sited as prior art) and *Zellweger* (US 5,630,125), sited as prior art 01/17/06.

As per claims 114, 124, 128-131, 133, 147-150, 152-155, 171, 172, 175-179, and 181-202, *RIPscrip/Qmodem* teaches a computer program product comprising a tangible computer readable medium having instructions stored hereon, the instructions comprising a first instructions executable at a user station, for selecting among a plurality of available online services to support an application function; and second instructions executable at a user station, for directing the establishment and use of a communication link between the user station and each online service, when the online service is selected.

Specifically, *Qmodem* is a software application for a user's modem that is usually pre-installed on the user's computer, however, executable floppy disks are provided if needed. *Qmodem* is pre-installed with an electronic phone book directory that includes access numbers for a host of online service functions from which the user may choose

to dial. The user may scroll down the available numbers and when a particular choice is highlighted the user may dial that highlighted choice. Example of online service functions available within the *Qmodem* directory were Bulletin Board Systems (BBS) (e.g., Forbin Project, Sound of Music, Hayes Support BBS or the Sail Air PCBoard. (pg. 110)) Each of these BBSs has different access numbers that the user may choose to dial. Specifically, the user may choice to dial into a BBS to post messages to other BBS users in special areas devoted to a particular topic. BBS also allows user to chat online with other users, send e-mail, download and upload files, and access the Internet. It is obvious that once the number is dialed and the modem connects the selected online service function's server, handshaking is conducted between the user's modem and the remote modem thereby establishing a communication link between the user station and the online service function's service. (pgs. 139, 152-167, 176-179 of Qmodem-Advanced Communication Operation Manual, Version 4.0, 1989)

Appellant previously argued that *Qmodem* does not permit the use of a graphical user interface, *Qmodem* (and *QmodemPro*) is/are a terminal emulator wherein it has no provision for downloading customized graphical user interfaces (GUI) from multiple online service providers, and no provision for executing program logic as an element or function of the downloaded GUIs. However, the Examiner previously argued that pgs. 55-57 the RIPscrip.pdf which discloses wherein an executable file associated with an application function may be downloaded to enable the processor to present the user

with *different customized* graphical user interface for each different online service functions in advance of their execution. (See the whole document pgs. 1-91)

RIP_READ_SCENE

Function: Playback local .RIP file
Level: 1
Command: R
Arguments: res:8 filename...
Format: !|1R <res> <filename>
Example: !|1R00000000testfile.rip
Uses Draw Color: YES
Uses Line Pattern: YES
Uses Line Thick: YES
Uses Fill Color: YES
Uses Fill Pattern: YES
Uses Write Mode: YES
Uses Font Sizes: YES
Uses Viewport: NO > v1.54

This command instructs the remote terminal to playback a local .RIP file. The current execution of RIPscrip commands will be temporarily suspended and the contents of the designated RIP file will begin executing. Regardless of whether or not the current RIPscrip code coming across the modem is in the middle of a line or not, the RIP playback file will be assumed to start at the beginning of a line. Therefore, if a RIP_READ_SCENE command is located in a .RIP file, it must be the very last command on the line, followed by a carriage return instead of a command delimiter (|). This ensures that the loaded .RIP file will begin executing properly with the correct delimiters found in the correct places.
The RIP playback file can alter colors, fonts, or whatever. Once the playback of the file is complete, the remaining RIPscrip code that was temporarily suspended will be resume execution. Any changes that appeared in the loaded playback file will remain in effect when the resumed code is processed. In other words, if you change a color or a font in the playback file and leave them changed, they will remain

in effect during the resumed execution.

NOTE: The <res> parameter is reserved for future development by TeleGrafix. It should be set to "00000000" for compatibility with future releases.

Therein, *Qmodem* is capable of storing and executing at a user station, and is associated with said application function for presenting the user with different customized graphical user interfaces for different selected online services in support of said application function; wherein, the different customized graphical user interfaces contain at least one element of a common user interface software package (Note claims 131, 184, 190, 199) and portions of the third computer program code are downloaded from the selected online service in advance of their execution.

Examiner believes that with the reading of RIPscript that it would have been obvious to one of ordinary skill in the art at the time of invention that *Qmodem* supports a user selecting a publisher's service function and dialing into the publisher's network and that the publishers could download to the user station an individual customized interface via connection to the publisher's service. Specifically, *Qmodem* discloses a plurality of online service functions or BBS including Forbin Project, Sound of Music, Hayes Support BBS or the Sail Air PCBoard. (pg. 110) that each has individualized customized interfaces, i.e. (different use of color, frames, layout, font color and/or font size) that is download from the publisher's server. Further, one of ordinary skill would readily recognize that any changes to the online-service provider's user interface is

stored so that when the user subsequently dials into the server of the online-service providers the same changes would be reloaded.

Examiner is maintaining the position that the user of a graphical user interface with a DOS-based interface would have been an obvious implementation of a well-known interface in the art. Specifically, Microsoft Press defines a graphical user interface as "a type of display format that enables the user to choose commands, start programs, and see lists of files and other options….choices can generally be activated either with the keyboard or with a mouse…for application developers, GUIs offer an environment that takes care of the direct interaction with the computer...this frees the developers to concentrate on the application without getting bogged down in the details of screen display or mouse and keyboard input…its also enables programmers to create programs that always handle frequently performed tasks...in the same way because the interface provides standard controlling mechanisms such as windows and dialog boxes." (see pg. 185)

However, *Zellweger* teaches the use of DOS based applications incorporating the use of GUI. *Zellweger* also disclosed wherein the applications may run on operating systems like Windows NT, OS/2, UNIX, and Macintosh, col. 14, lines 50-55. Specifically, *Zellweger* teaches an information management system that implements an open hierarchical data structure, wherein the system is designed to run on DOS in either a text mode or a GUI mode. *Zellweger's* software system incorporates the use of GUI in DOS based applications by simulating a graphical user interface with

customized character based menus that is generated by an application module (col. 12, lines 38-col. 14, lines 1-61, cols. 17-26). Examiner is taking the position that the use of a graphical user interface with a DOS-based interface would have been an obvious implementation of a well-known interface in the art.

Therefore, one of ordinary skill in the art would readily recognize that it would have been obvious to implement a GUI as the user interface to *RIPscipt/Qmodem's* DOS environment, as taught by *Zellweger*, because the DOS environment is a known field of endeavor that may prompt variations; therein, the design incentives or previous market forces provide a reason to make such a predictable adaptation, such as the incorporation of a GUI user interface with the *RIPscipt/Qmodem's* application would furthermore give the user the ability to make interactions with other applications easier.

As to the Appellant's claimed language filed 5/22/2009 implementing the use of instructions to form an application programming interface, *Kleinerman* teaches a system where the second computer system performs operations on data and instructions and the host computer systems generates presentation information based on the application programs, involves establishing selected parameters in the host computer presentation information, interpreting selected where the host computer system generates application presentation information. *Kleinerman* disclosed that the system may be implemented in personal computers as well as a host of other types of computers or computer operating systems. (col. 3, lines 63-col. 4, lines 1-10, col. 16,

lines 39-50) Specifically, *Kleinerman* teaches the use of a middleware product utilizing API (in combination with other interface managers) that permits the host/client computer (See Figs. 1-16, Abstract, cols. 1, lines 23-col. 28) to exchange messages or information (i.e. available network/online service) with a plurality of other computers/servers on the network.

Examiner took official notice that *Kleinerman* teaches the use of an API (in combination with other interface managers) as an intermediary to allow for seamless interaction between the host computer and the network/online service(s) and that such an implementation would obviously include exchange of messages or information.

Additionally, this seamless interaction would not exclude having a generic interface between the host/computer and the network/online service(s). Further, to assist applicants should they choose to challenge the examiner's Official Notice, the examiner is pointing out that following the KSR decision by the Supreme Court, the Office has changed its policy related to Official Notice. (See MPEP 2144.03 C.) The Office now requires applicants to provide persuasive evidence and/or arguments directly refuting the Official Notice before a supporting reference is to be supplied by the examiner.

Therefore, one of ordinary skill in the art would readily recognize that the teachings of *RIPscript/Qmodem/Zellweger* and *Kleinerman* are analogous art because they are all from the same field of endeavor and would be motivated to combine their insights with the intent to improve the method or means for managing and selecting content from among one or more online services by incorporating the use of a GUI. It

would have been obvious to implement an API that provides the generic user interface to *RIPscript/Qmodem/Zellweger* environment, as taught by *Kleinerman*, because the API environment is a known field of endeavor that may prompt variations; therein, the design incentives or previous market forces provide a reason to make such a predictable adaptation, such as the incorporation of *Kleinerman's* API generic user interface with the *RIPscript/Qmodem/Zellwegar* application would furthermore give the user the ability to gain access to a plurality of application services online with a generic user interface that would permits one computer program to request the services of another computer program. Further, this claim would have been obvious because a person of ordinary skill has good reason to pursue the known options with his or her technical grasp. This leads to the anticipated success and is the product not of innovation but of ordinary skill and common sense.

Regarding the claim language "wherein the third instructions receive via the API a response to the functional request from the online service in the background, thereby permitting the graphical user interface to continue operation;" Appellant previously argued that *Kleinerman* in effect teaches away from API performing "in the background," *Kleinerman* teaches the benefits of an API interface allowing for a generic client/host interface capable of communicating a functional request (message or application) associated with the application function.

Further, the definition of "in the background" is not defined by the claim in such a way that will not further distinguish the claimed invention in terms of patentability, i.e. there is no clear definition of what is meant by "in the background." Therefore the

Examiner has consulted applicant's specification for further definition and clarification. The specification states that "in the background" as 'completely invisible to or transparent to the user of a program running on their system'. (Appellant's Specification, pg. 12, lines 23-25) Appellant has argued that the claimed limitation as the most novel and distinguishing idea of the invention without sufficient support or disclosure in the claim that embodies and performs the feature. To one of ordinary skill in the art would recognize that a reference "teaches away" when it states that something cannot be done. ***See In re Gurley, 27 F.3d 551,553, 31 USPQ2d 1130, 1131 (Fed. Cir 1994).*** The examiner could find no statement in *Kleinerman* to the effect that the API is not running "in the background" or completely invisible to or transparent to the user of a program running on their system. The Examiner maintains that one skilled in the art is presumed to know something about the art apart from what the references literally disclose. (See In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962)). Further, "the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference." (In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Therein, Examiner is taking the position that some of the programs of Kleinerman's could run "in the background" and the interpretation of the broad phrase "in the background" is sufficient to preclude patentability as claimed and defined by Appellant.

As per claim 116, it would have been obvious to one of ordinary skill that, handshaking between the user's modem and the remote modem is performed using *RIPscipt/Qmodem's* communication parameters (pg. 19) for its communication port to effectuate some data transfer between the user station and the online provider.

As per claims 117 and 136, *RIPscipt/Qmodem/Zellweger* in combination with the API of *Kleinerman* teaches an application programming interface that is user friendly (obvious, *Kleinerman*) in which interaction with the user is simplified.

As per claims 118-122, 138-141, and 143, an object manifest is defined in the specification as conveying the status of a transport operation and to provide for additional information when needed. *RIPscipt/Qmodem's* teaches an object manifest to effectuate data transfers with communication parameters (pg. 19) for its communication port and its file transport protocols between the user station and the selected online service provider and *Kleinerman* teaches the API.

As per claims 125, 126, 134, 135, 137, 144, 145, 157-161, 163-170, the combination of *RIPscrip/Qmodem* teaches the use of a data transport instruction function that effectuates data transfers between the user station and a selected one of the independently-operated data sources via the non-proprietary network. One of ordinary skill would readily recognize that the software application *RIPscrip/Qmodem*

would use the communication parameters (pg. 19) for its communication port to effectuate some data transfer between the user station and the online provider. It is the position of the Examiner that the software application *Qmodem's* pre-installed dialing directory phone book gives the user the option to select between different independently operated data sources via a non-proprietary network. Further, *Kleinerman* teaches using proprietary and non-proprietary networks.

Claims 115, 132, 151, 154 ,172, 175-190, are rejected under 35 U.S.C. 103(a) as being unpatentable over "RIPscrip Graphics Protocol Specification," July 19, 1993, (the language code of *Qmodem*), *Microsoft Press, Zellweger*, *Kleinerman*, and in further view of *Pettus*, US 6,031,977 – sited Prior Art, page # 7.

As per claims 115, 132, 151, 154 ,172, 175-190, *RIPscrip/Qmodem's* does not expressly teach a set of translators and protocol drivers for each operated data source already stored on the user station, because, *Qmodem* teaches wherein the user has to download external protocols to facilitate a communication link between the user's modem and some remote modems. (*Qmodem,* pg. 32-34, pg. 153,161)

Zellweger teaches a Retrieval module 3 that reside on the hard drive 30 on the user station. The Retrieval module 3 provides a means for transferring product orders from the user station to the suppliers. Zellweger also teaches an alternative embodiment wherein the Retrieval module 3 includes configuration and functional components that are installed and executed on an end-user computer or executed

on a remote computer. (*Zellweger*, Abstract, col.7, lines 43-col. 8, lines 1-34, col. 13, lines 14-col. 16, line 1-15, Fig. 2)

However, *Pettus* discloses a local communication directory service that allows a user to browse and select information that is located on remote libraries. The user station stores a network address and service object (protocol driver) associated with each available service offered on a communication network. If the user desires to acquire access to a remote service listed in the communication directory the appropriate protocol drivers are utilized to facilitate establishment of the communication link. (*Pettus*, col. 4, lines 12-38, Fig. 11, col. 15, lines 19-col. 16, lines 1-40)

It would have been obvious to one of ordinary skill that *Qmodem-Zellweger-Kleinerman* would have been motivated to include specific protocol drivers for each operated data source, as disclosed by *Pettus*, because doing so would alleviate the user from concerning themselves with the details for downloading specific protocols that will facilitate a communication link between the user's modem and some remote modems.

(10) Response to Argument

On pages 12-14 of Appeal Brief, Appellant argues " In rejecting claims 114, 133, 153, and 171, the Examiner improperly equates, in part, the application program interface of Kleinerman with the application programming interface (API) recited in

claims 114, 133, 153, and 171 (final Office Action mailed January 25, 2010, p. 8-10.) The application program interface of Kleinerman falls well short of providing the non-obvious features of the API recited in claims 114, 133, 153, and 171. **(A)** For example, Kleinerman does not teach or suggest that the application program interface is configured to receive "a response to [a] functional request from the online service in the background, thereby permitting the graphical user interface to continue operation" as recited in independent claims 114, 133, 153, and 171. The Examiner appears to acknowledge that Kleinerman fails to teach this feature recited in claims 114, 133, 153, and 171. **(B)** Specifically, the Examiner appears to assert that, although Kleinerman does not teach an API that is configured to receive "a response to [a] functional request from the online service in the background," this feature, without any explicit disclosure or suggestion in Kleinerman, is nothing more than common knowledge and thus would have been obvious to a person of ordinary skill in the art. (final Office Action mailed January 25, 2010, p. 11.) Appellant respectfully disagrees." The Examiner improperly takes what appears to be Official Notice that the feature of claims 114, 133, 153, and 171, noted above, is common knowledge or well known in the art. *"It* would *not* be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03(A) (emphasis in original); *see also In re Eynde,* 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the

state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice."). Here, the Examiner alleges the fact, without any documentary evidence, that an API configured to receive "a response to [a] functional request from [an] online service in the background," as recited in claims 114, 133, 153, and 171, was common knowledge or well known in the art. (final Office Action mailed January 25, 2010, p. 11.) However, this alleged fact relates to "the state of the art" at the time of the earliest effective filing date of the instant application and is "subject to the possibility of rational disagreement among reasonable men." *See In re Eynde,* 480 F.2d at 1370, 178 USPQ at 474. Appellant submits that in May 1994 the state of the art was such that this feature in question would not have been common knowledge. Thus, this is not the type of fact amenable to Official Notice, especially given that the earliest effective filing date for the instant application was fifteen years ago, when the internet was still in its infancy. In the absence of any documentary proof that this "fact" was amenable to Official Notice as of May 1994, Appellant contests the Examiner's assertion of alleged fact."

(A) The Examiner respectfully disagree with Appellant that "Examiner appears to acknowledge that Kleinerman fails to teach this feature recited in claims 114, 133, 153, and 171." Even if we assume *arguendo* that Examiner appears to acknowledge that Kleinerman fails to teach this feature recited in claims 114, 133, 153, and 171, Examiner overcame that acknowledgment by stating that *Kleinerman* teaches the use of **a middleware product utilizing** an API (in combination with other interface

managers) as an intermediary to allow for seamless interaction between the host computer and the network/online service(s) and that such an implementation would obviously include exchange of messages or information; therein, Examiner took official notice that *Kleinerman's* API would provide a seamless interaction that would not exclude having a generic interface between the host/computer and the network/online service.

(B) Further, Appellant argued that *Kleinerman* in effect teaches away from API performing "in the background," because *Kleinerman* "does not teach an API that is configured to receive "a response to [a] functional request from the online service in the background," this feature, without any explicit disclosure or suggestion in Kleinerman, is nothing more than common knowledge and thus would have been obvious to a person of ordinary skill in the art," pg. 13, 2nd paragraph. Appellant further argued that "..Examiner improperly takes what appears to be Official Notice that the feature of claims 114, 133, 153, and 171, noted above, is common knowledge or well known in the art. *"It* would *not* be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." MPEP § 2144.03(A)," pg. 14, 1st paragraph.

(B) Examiner noted that the definition of "in the background" is not defined by the claim in such a way that will not further distinguish the claim invention in terms of

patentability, i.e. there is no clear definition of what is meant by “in the background.” Therefore Examiner had consulted applicant’s specification for further definition and clarification; and, the specification stated that “in the background” is be completely invisible to or transparent to the user of a program running on their system. (Appellant's Specification, pg. 12, lines 23-25)

Appellant is again arguing that the claimed limitation as the most novel and distinguishing idea of the invention without sufficient support or disclosure in the claim that embodies and performs the feature. One of ordinary skill in the art would recognize that a reference in effect teaches away from a feature when it states that such feature cannot be done. (***See In re Gurley, 27 F.3d 551,553, 31 USPQ2d 1130, 1131 (Fed. Cir 1994)***)

Further, an artisan skilled in the art would readily understand that having an application program running “in the background” while a GUI is operating is a multitasking operating system and Examiner could find no statement in *Kleinerman* to the effect that the API is not running "in the background" or not completely invisible to or transparent to the user of a program running on their system.

As to Appellant arguing that Examiner is basing the position as “.. nothing more than common knowledge and thus would have been obvious to a person of ordinary skill in the art,” Examiner maintains that one skilled in the art is presumed to know something about the art apart from what the references literally disclose. ***(See In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962))***. Further, "the conclusion of obviousness may be made from common knowledge and common sense of a person of

ordinary skill in the art without any specific hint or suggestion in a particular reference." ***(In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969).*** The level of the skilled artisan should not be underestimated. ***(See In re Sovish, 769 F. 2d 738,743,226 USPQ 771,774, (Fed.Cir. 1985)***

Appellant has questioned the Examiner's use of Official Notice without adequately traversing such a finding. The Examiner is suggesting Appellant review MPEP 2144.03 C where it points out that for an Appellant to adequately traverse an examiner's finding of fact the Appellant must specifically point out the supposed errors of the examiner's action "**which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art**". Appellant simply states that "the earliest effective filing date for the instant application was fifteen years ago, when the internet was still in its infancy. In the absence of any documentary proof that this "fact" was amenable to Official Notice as of May 1994, Appellant contests the Examiner's assertion of alleged fact," therein due to Appellant assertion that multitasking or use of API for seamless interaction between a GUI and application requests received in the background were not well known in the art Examiner sites the following:

Example 1 - an artisan skilled in the art would readily have common knowledge of multitasking operating system such as the AmigaOS (http://en.wikipedia.org/wiki/Amiga) that was initially introduced in 1985 with the Amiga

1000. At the time of release AmigaOS put an operating system that was well ahead of its time into the hands of the average consumer by providing a personal computer that implements preemptive multitasking, which in effect runs one or more application programs "in the background."

Example 2 - an artisan skilled in the art would readily have common knowledge of Microsoft releasing a multitasking system in 1985 – note 1985-1994: Windows and Office (http://en.wikipedia.org/wiki/Microsoft) that disclosed OS/2 (1985-87), WindowsNT and Win32 (API) (1993) that was released before May 31, 1994. Note that the sited reference *Zellweger,* filed before May 31, 1994, also disclosed GUI and applications that may run on operating systems like Windows NT, OS/2, UNIX, and Macintosh (col. 14, lines 50-55).

Therein, Examiner is taking the position that at least some of the programs of *Kleinerman* involve multitasking and API and thereby could receive a functional request from an application program "in the background." As claimed by Appellant the interpretation of the broad phrase "in the background" is sufficient to preclude patentability as claimed and defined by Appellant.

Finally, on page 14 and 15, Appellant disclosed/argued that "Moreover, an API that is configured to receive "a response to [a] functional request from the online service in the background," as recited in claims 114, 133, 153, and 171, provides for several non-obvious benefits that are not taught or suggested by Kleinerman. For example, an

API configured to receive a response to a functional request from an online service in the background may allow a user interface to continue operation in between the time a functional request is sent to an online service and a response to the functional request is received from the online service. This may provide for a more dynamic application, eliminating the need for start and stop interactions between a client application and an online service. In addition, because the response is received from the online service in the background, any interaction with the online service can be transparent to a user. Appellant is not aware that such background operations were in use or well known at the time of the earliest effective fling date of the instant application (May 31, 1994). Thus, absent a reference demonstrating the aforementioned advantageous and non-obvious feature of claims 114, 133, 153, and 171 to be well known, the Examiner cannot properly rely on common knowledge in the art. MPEP § 2144.03(A). For at least the foregoing reason, independent claims 114, 133, 153, and 171 are not rendered unpatentable over the combination of Kleinerman, RIPscrip, Microsoft, and Zellweger. Accordingly, Appellant respectfully requests that the rejection of claims 114, 133, 153, and 171 be reconsidered and withdrawn."

Examiner believed Appellant just disclosed/argued a multitasking system that was well known in the art at the time the invention was made - i.e. before May 31, 1994. Further, Examiner provided Appellant with examples wherein the use of API for seamless interaction with application program/online service can be transparent to the average user that were in use or well known at the time of the earliest effective fling date of the instant application (May 31, 1994).

Respectfully submitted,

/Tammara Peyton/
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